

HOUSE BILL No. 1133

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6; IC 8-1.

Synopsis: IURC fining authority. Allows the Indiana utility regulatory commission (IURC) to impose a civil penalty of up to \$5,000 on a public utility providing energy services if the public utility violates or fails to comply with any: (1) utility law; or (2) rate or service requirement imposed by the IURC. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure to comply demonstrates a willful disregard by the public utility of the public utility's duty to remedy the violation or a willful failure to comply. Specifies that a suit to recover or collect a forfeiture or penalty imposed by the IURC must be brought by the IURC or, at the IURC's option, by the attorney general. Provides that if the IURC acts independently of the attorney general to recover or collect a forfeiture or penalty, the IURC may, subject to the approval of the governor and the budget agency, contract with outside counsel to prosecute the suit or assist the IURC in prosecuting the suit.

Effective: July 1, 2016.

Dvorak

January 7, 2016, read first time and referred to Committee on Utilities, Energy and Telecommunications.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1133

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-3-2, AS AMENDED BY P.L.136-2012,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 2. (a) The attorney general shall have charge of
4 and direct the prosecution of all civil actions that are brought in the
5 name of the state of Indiana or any state agency.

6 (b) In no instance under this section shall the state or a state agency
7 be required to file a bond.

8 (c) This section does not affect the authority of prosecuting
9 attorneys to prosecute civil actions.

10 (d) This section does not affect the authority of the inspector general
11 to prosecute a civil action under IC 4-2-7-6 for the recovery of any of
12 the following:

13 (1) Funds misappropriated, diverted, missing, or unlawfully
14 gained.

15 (2) A civil penalty imposed by the state ethics commission under
16 IC 4-2-6-12.

17 (e) The attorney general may bring an action to collect unpaid



1 registration fees owed by a commercial dog broker or a commercial
2 dog breeder under IC 15-21.

3 **(f) This section does not affect the authority of the Indiana**
4 **utility regulatory commission, at the commission's option, to act**
5 **independently under IC 8-1-2-115 to recover or collect a forfeiture**
6 **or penalty.**

7 SECTION 2. IC 4-6-5-3, AS AMENDED BY P.L.242-2015,
8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2016]: Sec. 3. (a) No agency, except as provided in this
10 chapter, shall have any right to name, appoint, employ, or hire any
11 attorney or special or general counsel to represent it or perform any
12 legal service in behalf of the agency and the state without the written
13 consent of the attorney general.

14 (b) An attorney employed by an agency is subject to IC 34-46-3-1
15 and Trial Rule 26(B) of the Indiana Rules of Trial Procedure,
16 commonly referred to as the attorney-client and work product
17 privileges, if the requirements to assert the protection and privilege
18 have been satisfied.

19 **(c) This section does not affect the authority of the Indiana**
20 **utility regulatory commission, at the commission's option, to act**
21 **independently under IC 8-1-2-115 to recover or collect a forfeiture**
22 **or penalty.**

23 SECTION 3. IC 8-1-1-11 IS AMENDED TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2016]: Sec. 11. **Subject to IC 8-1-2-115(b)**, the
25 commission is authorized to employ such counsel or attorneys,
26 engineers, administrative law judges, experts, clerks, accountants and
27 other assistants as it may deem necessary, at such rates of
28 compensation as it may determine upon, subject, however, to the
29 approval of the governor.

30 SECTION 4. IC 8-1-2-109 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 109. **(a) This section**
32 **does not apply to:**

33 **(1) a public utility that owns, operates, manages, or controls**
34 **any plant or equipment in Indiana for the production,**
35 **transmission, delivery, or furnishing of heat, light, or power;**
36 **or**

37 **(2) a department of public utilities created under IC 8-1-11.1.**

38 **(b) A public utility that violates this chapter, or fails to perform any**
39 **duty enjoined upon it, for which a penalty is not otherwise provided,**
40 **commits a Class B infraction.**

41 SECTION 5. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE
42 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2016]: Sec. 109.1. (a) This section does not apply when a public utility's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the public utility, including any of the following:

- (1) Customer provided equipment.
- (2) A negligent act or omission of a customer.
- (3) An unavoidable casualty.
- (4) An act of God.

(b) As used in this section, "public utility" means every corporation, company, partnership, limited liability company, individual, or association of individuals, or their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, or power. The term includes a department of public utilities created under IC 8-1-11.1. The term does not include:

- (1) a municipality or political subdivision;
- (2) a rural electric membership corporation organized or operating under IC 8-1-13; or
- (3) a corporation organized under IC 23-17 that:
 - (A) is an electric cooperative; and
 - (B) has at least one (1) member that is a corporation organized under IC 8-1-13.

(c) A public utility and every officer of a public utility shall comply with every order or rule of the commission made under this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds, after notice and hearing, that a public utility has violated this chapter or failed after due notice to comply with:

- (1) a standard of service established by commission rule; or
- (2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the public utility to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that a public utility's violation or failure to comply demonstrates, by a continuing pattern of conduct, a willful disregard by the public utility of the public utility's obligation to remedy the violation or a willful failure to comply, the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.



(f) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

- (1) The size of the public utility.
- (2) The gravity of the violation or failure to comply.
- (3) The good faith of the public utility in attempting to:
 - (A) remedy the violation; or
 - (B) achieve compliance after receiving notification of the violation or failure to comply.
- (4) The effect of the civil penalty on the public utility's financial ability to provide adequate and reliable service.
- (5) If the public utility is a nonprofit company:
 - (A) the effect of the penalty on the company's members and their capitalization of the company; and
 - (B) whether the act or omission causing the violation or failure to comply was approved or requested by the company's members.

In the order imposing the civil penalty, the commission shall make specific findings with respect to the factors described in subdivisions (1) through (5).

(g) A public utility may not be subject to both a civil penalty under this section and a negotiated penalty under a commission approved settlement agreement for the same violation or failure to comply. If the commission approves a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties under this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(h) Notwithstanding section 112 of this chapter, a civil penalty imposed under this section for each violation or failure to comply by a public utility may not be multiplied or increased because of the number of customers affected or the length of time service is affected. Only one (1) violation or failure to comply per day may be attributed to a public utility as a result of a particular condition, system outage, storm, act, omission, event, decision, or other cause occurring on that day.

(i) A civil penalty recovered under this section shall be paid into the state general fund.

(j) Upon the motion of a public utility, the commission shall stay the effect or enforcement of an order under this section pending an appeal, if the public utility posts a bond that complies with Rule 18 of the Indiana Rules of Appellate Procedure.



SECTION 6. IC 8-1-2-115 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 115. (a) The commission shall inquire into any neglect or violation of the statutes of this state or the ordinances of any city or town by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be ~~its~~ **the commission's** duty, to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered, and suit therein shall be brought **by the commission or, at the commission's option, by the attorney general** in the name of the state of Indiana in ~~the circuit or superior court where the public utility has its principal place of business.~~ **a court that has jurisdiction.** Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the **commission or, at the commission's option, by the attorney general.** ~~counsel.~~

(b) If the commission acts independently of the attorney general under subsection (a) to bring a suit to recover or collect a forfeiture or penalty under this chapter, the commission may, subject to the approval of the governor and the budget agency, contract with one (1) or more attorneys who are not members of the commission's regular staff to prosecute the suit or assist the commission in prosecuting the suit. An attorney contracted by the commission under this section must be employed:

- (1) at the salary; and
 - (2) for the length of time;
- approved by the governor and the budget agency for the particular case.

